

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

STERICYCLE, INC.

Employer

and

Case 4–RC–19915

TEAMSTERS LOCAL 628 a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL–CIO¹

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The Employer contends that the hearing officer erred in refusing to permit the Employer's witness to testify. The Employer thus requests that this case be remanded to the hearing officer for the purpose of taking the witness's testimony.

The Petitioner originally sought a unit of drivers and loaders. At the hearing, the Employer wished to present the testimony of a Mr. Velocci.² According to the Employer's offer of proof, Mr. Velocci would have testified that the Employer's loaders and drivers "do not have an interchange of personnel," do not "share common work

¹ The Petitioner's name appears as amended at the hearing.

² Mr. Velocci's given name is not identified in the record.

hours, . . . do not share common rates of pay [and] . . . do not share common eating facilities.” According to the Employer, this evidence would have established that drivers and loaders do not share a community of interest. In response to the Employer’s contention, the Petitioner’s attorney said that the Petitioner is willing to go to an election in separate units of drivers and loaders. When the hearing officer asked for the Employer’s position, the Employer’s attorney responded that the Employer was willing to take a position on the petitioned-for unit, but that the Employer would not take a position on the Petitioner’s alternate unit.

Section 102.66(a) of the Board’s Rules and Regulations provides parties with a right to a hearing on a representation petition and the right to call witnesses and to introduce evidence. The right to present witnesses and other evidence, however, is not absolute. Thus, in *Bennett Industries*, 313 NLRB 1363 (1994), the Board found that, “in order to effectuate the purposes of the Act through expeditiously providing for a representation election, the Board should seek to narrow the issues and limit its investigation to areas in dispute.” Accordingly, in *Bennett Industries*, the Board found that the hearing officer properly refused to permit the Employer to introduce evidence concerning the supervisory status of certain individuals where the Employer did not take the position that those individuals were supervisors.

In the instant case, the Petitioner met the Employer’s contention that its drivers and loaders lack a community of interest by offering to go to election in separate units. Although offered the opportunity to do so, the Employer did not contend at the hearing, and does not contend on brief, that these separate units are inappropriate. Accordingly, the evidence the Employer wished to present at the hearing would not serve to resolve any issue in dispute between the parties. The hearing officer therefore properly fulfilled her duty to “protect the integrity of [the Board’s] processes against unwarranted burdening of the record and unnecessary delay.” *Jersey Shore Nursing Center*, 325 NLRB 603 (1998). See also *Mariah, Inc.*, 322 NLRB 586 (1996); *Bennett Industries*, supra, 313 NLRB 1363. Contrary to the Employer’s contention, the Board’s decision in *Barre-National*, 316 NLRB 877 (1995), does not require a different result. In *Barre-National*, the Board held that the hearing officer in that case erred in refusing to take testimony on the disputed supervisory status of certain individuals even if the Regional Director intended to vote the individuals subject to challenge. 316 NLRB at 878–879. Unlike *Barre-National*, there are no issues to litigate in the instant case.³ Simply put, there is no need to take testimony on the question whether drivers and loaders lack a

³ *North Manchester Foundry*, 328 NLRB No. 50 (1999), on which the Employer also relies, is inapposite for similar reasons. In *North Manchester Foundry*, the Board found that the hearing officer erroneously closed the record after the Petitioner excluded one job classification and the remaining job classifications in dispute constituted 10 percent of the unit. The hearing officer reasoned that employees in the remaining classifications could vote in the election subject to challenge. As in *Barre-National*, there were issues in dispute in *North Manchester Foundry* and the Board concluded that the Employer was entitled to a hearing on those issues. 328 NLRB No. 50, slip op. at 1–2. Again, in the instant case, there are no issues to litigate.

community of interest where the Petitioner agreed to proceed to election in separate units of drivers and loaders and no one contends that these separate units are inappropriate.

Accordingly, the hearing officer's ruling that barred the Employer from presenting the testimony of its witness is affirmed and the Employer's request to reopen the hearing is denied.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. I find that the following employees⁴ constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

UNIT A (Drivers Unit)

All full-time and regular part-time drivers employed by the Employer at its 111 Domorah Drive, Montgomeryville, Pennsylvania terminal, excluding loaders, mechanics, office clerical employees, guards and supervisors as defined in the Act.

UNIT B (Loaders Unit)

All full-time and regular part-time loaders employed by the Employer at its 111 Domorah Drive, Montgomeryville, Pennsylvania terminal, excluding drivers, mechanics, office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

⁴ The parties stipulated that the following individuals are supervisors and are therefore excluded from the units herein: Fleet Manager Randy Hallman, Transportation Manager John Laigaie, Supervisor of Load Team Tom Stein, and Operations Manager Willie Reiss.

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the notice of election to be issued subsequently,⁵ subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

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LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies **each of separate** election eligibility lists **for each of the units**, containing the ***full*** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the lists available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The lists must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such lists must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **March 22, 2000**. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

⁵ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **March 29, 2000**.

Dated March 15, 2000

at Philadelphia, PA

/s/ John D. Breese

JOHN D. BREESE

Acting Regional Director, Region Four

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